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1.1 Distinguishing Civil Infractions From Criminal Traffic Offenses

A civil infraction is “an act or omission prohibited by law which is not a crime . . . and for which civil sanctions may be ordered.” MCL 257.6a; MSA 9.1806(1). Crime means “an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any one or more of the following:

- (a) Imprisonment.
- (b) Fine not designated a civil fine.
- (c) Removal from office.
- (d) Disqualification to hold an office of trust, honor, or profit under the state.
- (e) Other penal discipline.”

MCL 750.5; MSA 28.195.

A civil infraction is not a crime, and therefore not a lesser-included offense of a criminal offense. MCL 257.907(1); MSA 9.2607(1).

1.2 Civil Infractions

As of 1994, Michigan has grouped civil infractions into three major categories: those infractions found in the Michigan Vehicle Code, state civil infractions and municipal civil infractions. See MCL 600.113; MSA 27A.113. Motor vehicle violations can be found in each of the three categories.*

Michigan Vehicle Code Civil Infractions

Michigan law recognizes several types of traffic offenses. Years ago, all traffic offenses were classified as crimes. The offenders were tried in criminal courts and, if found guilty, were punished by fines and imprisonment. As the number of drivers and vehicles increased, the burden on the criminal courts became unmanageable. In 1979, the Michigan Legislature amended many sections of the Michigan Vehicle Code (MVC), changing the status of many traffic misdemeanors to civil infractions. Many minor traffic offenses were thereby decriminalized and have thereafter been adjudicated in hearings (formal and informal) rather than trials. See 1978 PA 510 (“Civil Infraction Act”), and *People v Schomaker*, 116 Mich App 507 (1982) (under the amended statute, denial of jury trial to persons charged with civil infractions did not render amendment unconstitutional).

The MVC clearly distinguishes the civil infraction from the misdemeanor and felony traffic offense. “It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of this state declared to be a felony or a civil infraction.” MCL 257.901(1); MSA 9.2601(1). In other words, all civil infractions are declared by statute to be so.

Adjudication of a civil infraction violation follows the rules of civil procedure as provided in a separate court rule. See, generally, MCL 257.741–257.750; MSA 9.2441–9.2450, and MCR 4.101. The court must decide either in favor of the plaintiff, or in favor of the defendant by a preponderance of the evidence (a 51 percent majority). Because the defendant no longer faces the possibility of going to jail, the procedural safeguards necessary in a criminal case, e.g., the right to a jury trial, the right to appointed counsel for indigents, proof beyond a reasonable doubt, and strict adherence to the rules of evidence, are not observed.

The defendant driver who is cited for a civil infraction, does not plead “guilty,” “not guilty,” or “nolo contendere”; he or she must either admit responsibility, admit responsibility with explanation, or deny responsibility for the civil infraction violation. MCL 257.745; MSA 9.2445. Defendant drivers are not convicted, but instead are found responsible. Because a civil infraction is not a crime, findings of responsibility are not reported on the defendant’s criminal record; however, they are reported to the Secretary of State and appear on the defendant’s driving record.

*See MCL 600.8701 et seq.; MSA 27A.8701 et seq. (municipal civil infractions), and MCL 600.8801 et seq.; MSA 27A.8801 et seq. (state civil infractions).

Most traffic offenses are no longer criminal offenses, but are now civil infractions. Civil infractions are not crimes and are not punishable by imprisonment or by penal fines.

1.3 Courts With Jurisdiction of Traffic Civil Infractions

MCL 257.741(2); MSA 9.2441(2), provides that the following courts have jurisdiction over traffic civil infraction actions:

- the district court;

The district court may establish within the court a traffic bureau to accept and collect civil fines and costs as prescribed by the judges of the district. MCL 600.8391; MSA 27A.8391.

- the recorder's court in Detroit, the traffic and ordinance division;* and
- any municipal court.

MCL 257.741(5); MSA 9.2441(5), states:

“If the person cited [for a civil infraction] is a minor, that individual shall be permitted to appear in court without the necessity of appointment of a guardian or next friend. The courts listed in subsection (2) shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult.”

However, the Family Division of Circuit Court may have jurisdiction over a juvenile who commits a civil infraction. Under MCR 5.903(B)(4), an “offense by a juvenile” includes an act that violates a criminal statute or ordinance, or an act that violates a traffic law other than an offense designated as a civil infraction. See *Welch v District Court*, 215 Mich App 253, 256–57 (1996). Thus, the court rules governing juvenile procedure preclude the Family Division of the Circuit Court from exercising jurisdiction over a juvenile accused of a civil infraction.

Nonetheless, a recent amendment to the Juvenile Code allows the Family Division to exercise such jurisdiction in certain circumstances. A Family Division may now enter an agreement under §2e of the Juvenile Code with any or all district courts or municipal courts within its geographical jurisdiction. MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). The agreement must specify the civil infractions for which the Family Division “waives” jurisdiction; those civil infractions for which the Family Division “waives” jurisdiction must be heard in the district or municipal court. MCL 712A.2e(1)–(2); MSA 27.3178(598.2e)(1)–(2).*

*Recorder's Court was abolished in 1997. See MCL 600.9931; MSA 27A.9931.

*See *Juvenile Traffic Benchbook* (MJJ, 1999) for detailed treatment of the procedures governing juvenile traffic actions.

1.4 Judges and Magistrates

The district court judge may hear and decide all civil infraction cases. The district court judge must conduct all formal hearings in civil infraction actions.

In 1968, the legislature enacted the District Court Act creating the office of the district court magistrate. The magistrate serves in a quasi-judicial capacity.

“A district court magistrate may hear and preside over civil infraction admissions and admissions with explanation and conduct informal hearings in civil infraction actions.... If the defendant is determined to be responsible for a civil infraction, the magistrate may impose the civil sanctions....”

“A district court magistrate may exercise the authority... only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district.”

MCL 600.8512(1) and (3); MSA 27A.8512(1) and (3).

Part A—The Citation

1.5 Civil Infraction Procedure Begins With the Citation

The rules of procedure for adjudication of civil infractions are found in MCL 257.741–257.750; MSA 9.2441–9.2450, and MCR 4.101.

“A civil infraction action is a civil action in which the defendant is alleged to be responsible for a civil infraction. A civil infraction is commenced upon the issuance and service of a citation.... The plaintiff in a civil infraction action shall be either the state if the alleged civil infraction is a violation of... [the Michigan Vehicle Code], or a political subdivision if the alleged civil infraction is a violation of a local ordinance... which substantially corresponds to a provision of [the Michigan Vehicle Code].”

MCL 257.741(1); MSA 9.2441(1).

The civil infraction proceeding begins when a law enforcement officer issues a citation to a driver. The cited driver is the defendant. MCR 4.101(A)(1).

“A warrant may not be issued for a civil infraction unless permitted by statute.” MCR 4.101(A)(4). The court cannot issue a warrant if the violation is not a crime. However, the civil infraction could create the impetus for issuing a warrant. For example, if the defendant fails to appear or otherwise respond to any matter pending relative to a civil infraction action (failure to do so is a misdemeanor), the court shall notify the Secretary of State and the Secretary of State shall suspend the defendant’s license. If the defendant is later stopped while driving on a suspended license (also a misdemeanor), the court may issue a warrant. See MCL 257.321a(1) and (2); MSA 9.2021(1)(1) and (2).

For a parking violation, the civil infraction proceeding begins when an authorized person securely places a citation or parking violation notice on the vehicle, or mails a citation to the registered owner of the vehicle, and files a copy with the district court. MCR 4.101(A)(1)(a).

1.6 What Is a Citation?

Citation means “a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited.” MCL 257.727c(1); MSA 9.2427(3)(1). The Michigan Uniform Traffic Citation, issued by the Michigan State Police, has 4 parts:

- The original, or court copy, which is filed with the court.*
- The police copy, which the citing officer retains.
- The misdemeanor copy, which is given to the defendant if the charged offense is a misdemeanor.
- The civil infraction copy, which is given to the defendant if the charged offense is a civil infraction.

MCL 257.727c(1)(a)–(d); MSA 9.2427(3)(1)(a)–(d).

The original copy of the citation, filed with the district court, serves as the complaint. MCR 4.101(A)(1). Depending on the offense, either the misdemeanor copy or the civil infraction copy is given to the driver. “A single citation may not allege both a misdemeanor and a civil infraction.” MCR 4.101(A)(3). The driver’s copy serves as a summons that brings the driver under the court’s jurisdiction and notifies the driver of the charges. MCR 4.101(A)(2).

1.7 When Is a Citation Issued?

A citation is issued:

- When the officer witnesses the civil infraction violation. The officer may stop and detain a person temporarily for purposes of

*This copy may be filed on paper or electronically. MCR 4.101(A)(1).

making a record of vehicle check and issuing a citation for a civil infraction when the officer witnesses the civil infraction violation. MCL 257.742(1); MSA 9.2442(1).

- If, after personal investigation of a traffic accident, there is reasonable cause to believe the driver committed a civil infraction. “A police officer may stop and detain a driver involved in a motor vehicle accident for the purpose of issuing a citation for a civil infraction when (1) the officer witnesses the civil infraction violation, or (2) based upon the officer’s personal investigation, the officer has reasonable cause to believe that the driver is responsible for a civil infraction [in connection with the accident].” *People v Estabrooks*, 175 Mich App 532, 537–38 (1989), and MCL 257.742(1); MSA 9.2442(1).
- If, after an investigation of a citizen’s complaint, there is reasonable cause to believe the driver committed a civil infraction and the prosecuting attorney approves the issuance of the citation. “A police officer may not stop a driver for a civil infraction solely on the basis of a witness’ complaint.” MCL 257.742(1); MSA 9.2442(1), and *People v Estabrooks*, 175 Mich App 532, 537–38 (1989).

The officer may also issue a citation outside of his or her area of jurisdiction if he or she witnessed a violation of a civil infraction within his or her area of jurisdiction. The “officer may pursue, stop, and detain the person... for the purpose of exercising the authority and performing the duties prescribed....” MCL 257.742(1); MSA 9.2442(1).

1.8 Special Requirements for Nonresidents

If the defendant is a nonresident of Michigan, several special provisions apply. First, the citing officer is required by law to take the nonresident defendant’s license as security for the defendant’s appearance in court unless the nonresident leaves either a so-called guaranteed appearance certificate or a sum of money not to exceed \$100. Second, the nonresident has the option under Michigan law to demand to be taken to the nearest magistrate, if one is available, to answer the civil infraction charged. The nonresident defendant’s license shall be returned if:

- judgment is entered for the defendant;
- an adverse judgment against the defendant is satisfied; or
- defendant leaves either a so-called guaranteed appearance certificate or a sum of money not to exceed \$100.

MCL 257.749(1)–(3); MSA 9.2449(1)–(3).

1.9 How Is a Citation Properly Issued?

The Michigan Vehicle Code says, “The officer shall inform the person of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the alleged offender.” MCL 257.742(5); MSA 9.2442(5). The statute is not specific as to what constitutes “informing” or what constitutes “delivery.”

“In a civil infraction action involving the parking or standing of a motor vehicle, a copy of the citation need not be served personally upon the defendant but may be served upon the registered owner by attaching the copy to the vehicle....” MCL 257.742(6); MSA 9.2442(6). The words “need not be served personally” and “attaching” are specific.

MCR 4.101(A)(1)(a) and (b) state:

“(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court.

“(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle. In either event, the citation must be filed with the district court.

“(b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. . . .”

The court rule is not specific as to what constitutes “serving,” but the words “placing securely on the vehicle” and “mailing” are specific.

The failure to respond to a parking violation notice may result in the issuance of a citation. A copy of such a citation may be served by first-class mail upon the registered owner of the vehicle at the owner’s last-known address. Citations alleging parking or standing violations are treated the same as other citations alleging civil infractions. See MCL 257.742(7)–(8); MSA 9.2442(7)–(8).

1.10 What Information Is Required on the Citation?

The following information shall be included on the citation:

- the name of the state or political subdivision acting as the plaintiff;

- the name and address of the person to whom the citation is issued;
- the civil infraction alleged;
- the place where the person shall appear in court;
- the telephone number of the court;
- the time at or by which the appearance shall be made;
- defendant's options for responding to the citation; and
- notice that failure to appear will result in entry of a default judgment.

MCL 257.743; MSA 9.2443.

MCL 257.743(3); MSA 9.2443(3), adds:

“The citation shall inform the defendant that if the person desires to admit responsibility ‘with explanation’ other than by mail or to have an informal hearing or a formal hearing, the person must apply to the court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date may be specified on the citation.”

If the citation is issued to a person who is operating a commercial vehicle, the citation shall contain a vehicle group designation number and endorsement description of the vehicle. MCL 257.743(5); MSA 9.2443(5).

When an offense is committed in the officer's presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1).

The citation signed by the police officer shall be treated as **made under oath** if:

- the alleged violation is a civil infraction or a minor offense (misdemeanor or ordinance violation punishable by not more than 92 days in jail and not more than a \$500 fine);
- the violation was committed in the officer's presence, or after an investigation of a traffic accident or a citizen's complaint, the officer has reasonable cause to believe the driver committed a civil infraction or a minor offense; and
- the citation contains the following statement immediately above the date and signature of the officer:

“I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.”

MCL 257.727c(3); MSA 9.2427(3)(3).

1.11 Are There Defects in the Citation?

When an offense is committed in the officer's presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1). A properly completed citation serves as a summons that brings the driver under the court's jurisdiction and notifies the defendant of the charges. MCR 4.101(A)(2). There may be times when the citing officer does not properly complete the citation, but only material defects in the citation will make it invalid.

Material defects may include:

- the absence of the citing officer's signature,*
- incorrectly identifying the defendant,
- failing to clearly identify the traffic offense,
- failing to specify the location of the offense, or
- failing to specify the date of the offense or entering an incorrect date.

Courts vary in their opinion as to what actually constitutes a material defect. But if the court finds that a citation was issued with a material defect, it is generally dismissed without prejudice. The citation may be reissued or the citing officer may file a motion to have it reinstated. If the defects in the citation are not material defects and it is timely heard, the court may allow the citing officer to amend the complaint.

*See MCR
4.101(E)(1).

Part B—Admissions of Responsibility and Taking Matters Under Advisement

1.12 Defendant's Options When a Citation Is Issued

All defendants who receive a citation for a civil infraction shall appear and may respond to the allegations in the citation. See MCL 257.745; MSA 9.2445. The defendant has these options:

- Admit responsibility without explanation for the civil infraction and make an appearance in person, by representation, or by mail,
- Admit responsibility with explanation for the civil infraction and make an appearance by mail or by contacting the court for a date and time to appear and then appearing in person or by representation, or

- Deny responsibility for the civil infraction and make an appearance at an informal or formal hearing.

See also MCR 4.101(D)(1)–(4).

1.13 Defendant Admits Responsibility Without Explanation

Quite often, the defendant chooses to dispose of the matter quickly by admitting responsibility without explanation. He or she may do so by mail, or by personally delivering the citation to the court.

1.14 Accepting an Admission of Responsibility Without Explanation by Mail

If the defendant admits responsibility without explanation for the civil infraction, he or she must make an appearance by mail, in person, or by representation. MCL 257.745(2); MSA 9.2445(2).

Typically, the defendant is instructed in the citation to contact the court to get the amount of the civil fine and costs. The defendant is further instructed to mail his or her copy of the citation, signed, with a certified check or money order to the court clerk, on or before the appearance date on the citation. “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued....” MCL 257.741(3); MSA 9.2441(3).

“If appearance is made by... mail, the court may accept the admission with the same effect as though the person personally appeared in court.” MCL 257.745(2); MSA 9.2445(2).

Accepting an admission of responsibility without explanation by mail includes: 1) examining the case file for completeness, 2) determining whether the defendant has admitted responsibility, and 3) entering judgment and collecting the civil fine and costs.

1. Examining the Case File For Completeness

The case file will contain the court copy of the citation that corresponds with defendant’s copy of the citation and the defendant’s driving record. If the defendant was cited after an accident, the police report is not generally included in the court file. Defendant’s appearance by mail should include the defendant’s copy of the citation, signed by the defendant admitting responsibility, and a certified check or money order for full payment of the civil fine and costs.

- Examine the appearance date.

First, look at the appearance date on the citation and compare it to the postmark date on defendant's appearance by mail. If the defendant did not appear on or before the appearance date on the citation, the defendant is in default. The court then simply enters a default judgment finding the defendant responsible and imposes the appropriate sanction.

Sometimes, a defendant mails his or her copy of the citation to the court a few days late. Individual court policy determines what action to take if this situation arises.

- Check for material defects in the citation.

When an offense is committed in the officer's presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1). A properly completed citation serves as a summons that brings the driver under the court's jurisdiction and notifies the defendant of the charges. MCR 4.101(A)(2). There may be times when the citing officer does not properly complete the citation, but only material defects in the citation will make it invalid. Material defects may include:

- the absence of the citing officer's signature,*
- incorrectly identifying the defendant,
- failing to clearly identify the traffic offense,
- failing to specify the location of the offense, or
- failing to specify the date of the offense or entering an incorrect date.

*See MCR
4.101(E)(1).

Courts vary in their opinion as to what actually constitutes a material defect. But if the court finds that a citation was issued with a material defect, it is generally dismissed without prejudice. The citation may be reissued or the citing officer may file a motion to have it reinstated. If the defects in the citation are not material defects and it is timely heard, the court may allow the citing officer to amend the complaint.

2. Determining Whether the Defendant Has Admitted Responsibility Without Explanation

Next, the court will determine whether the defendant has actually admitted responsibility for the offense as alleged on the citation.

- Check for defendant's signature on the citation.

This is not problem if the defendant has signed the back of the citation in the box stating, "I enter my appearance, waive my right to a hearing, and I admit responsibility for the civil infraction alleged on the front of this citation." But sometimes, the defendant will mail his or her copy of the

citation to the court without signing it. Individual court policy determines what action to take if this situation arises.

3. Entering Judgment and Collecting Civil Fines and Costs

The court may accept the admission and enter a judgment finding the defendant responsible and impose the appropriate sanction.

- Check to see that defendant enclosed full payment for the civil fine and costs.

Defendant should have mailed full payment for the civil fine and costs. The certified check or money order may or may not be signed by the defendant. Individual court policy determines what action to take if this situation arises.

1.15 Accepting an Admission of Responsibility Without Explanation in Person or By Representation

If the defendant admits responsibility without explanation for the civil infraction, he or she must make an appearance by mail, in person, or by representation. MCL 257.745(2); MSA 9.2445(2).

If the defendant does not appear by mail, he or she must contact the court (in person, by mail, by telephone, or by representation) for a date and time to appear and to get the amount of the civil fine and costs, payable only by certified check or money order. Then, the defendant must appear in person or by representation. “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued....” MCL 257.741(3); MSA 9.2441(3).

To appear by representation means that the defendant chooses another person (anyone, but not an attorney acting in a legal capacity), to represent the interests of or to stand in the place of the defendant. The representative is empowered to act for the defendant. “If appearance is made by representation..., the court may accept the admission with the same effect as though the person personally appeared in court.” MCL 257.745(2); MSA 9.2445(2).*

Accepting an admission of responsibility without explanation in person or by representation includes: 1) scheduling defendant’s appearance, 2) examining the case file for completeness, 3) determining whether the defendant has admitted responsibility, and 4) entering judgment and collecting the civil fine and costs.

1. Scheduling Defendant’s Appearance

If the defendant does not appear by mail, he or she must contact the court (in person, by mail, by telephone, or by representation) for a date and time to appear and then appear in person or by representation.

*It may be a good idea to take identification from the person appearing by representation for the defendant, and to write the name of that person on the ticket.

Scheduling the appearance date varies from court to court. Some district courts schedule a specific date for the defendant to appear; it will be stated on the citation. Other courts schedule the defendant to appear on a “drop-in” basis within a specific period of time; it too will be stated on the citation. “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued....” MCL 257.741(3); MSA 9.2441(3).

If the appearance date is scheduled by telephone, the court may wish to mail to the defendant a notice confirming the appearance date.

Once the appearance date is scheduled, the defendant is required to appear, either in person or by representation.

2. Examining the Case File for Completeness and Verifying the Identity of the Defendant

The case file will contain the court copy of the citation that corresponds with defendant’s copy of the citation and the defendant’s driving record. If the defendant was cited after an accident, the police report is not generally included in the court file.

- Examine the appearance date.

First, look at the appearance date on the citation. If the defendant did not appear on or before that date, the defendant is in default. The court then simply enters a default judgment finding the defendant responsible and imposes the appropriate sanction.

Sometimes, the defendant appears in person a few days late. Individual court policy determines what action to take if this situation arises.

- Check for material defects in the citation.

When an offense is committed in the officer’s presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1). A properly completed citation serves as a summons that brings the driver under the court’s jurisdiction and notifies the defendant of the charges. MCR 4.101(A)(2). There may be times when the citing officer does not properly complete the citation, but only material defects in the citation will make it invalid. Material defects may include:

- the absence of the citing officer’s signature,*
- incorrectly identifying the defendant,
- failing to clearly identify the traffic offense,
- failing to specify the location of the offense, or
- failing to specify the date of the offense or entering an incorrect date.

*See MCR 4.101(E)(1).

Courts vary in their opinion as to what actually constitutes a material defect. But if the court finds that a citation was issued with a material defect, it is generally dismissed without prejudice. The citation may be reissued or the citing officer may file a motion to have it reinstated. If the defects in the citation are not material defects and it is timely heard, the court may allow the citing officer to amend the complaint.

- Verify the identity of the defendant.

It is important to verify that the defendant, whether appearing in person or by representation, is the same individual who is identified on the citation. If the defendant appears in person, ask if he or she is the person cited.

If the defendant appears by representation, ask if he or she is representing the person cited. A defendant who appears by representation may have any person offer the admission. However, the court may still require the defendant to offer further explanation and/or appear in court.*

3. Determining Whether the Defendant Has Admitted Responsibility

Next, the court will determine whether the defendant has admitted responsibility for the offense as alleged on the citation.

If the defendant appears in person or by representation, the court should read the charge(s) from the citation and ask the defendant or defendant's representative whether he or she understands the charge(s). If the charge is not understood, the court must further explain. Once the defendant or defendant's representative indicates that he or she understands the charge(s), the court should explain the defendant's options (admit responsibility, admit responsibility with explanation, or deny responsibility), and ask the defendant or defendant's representative how he or she wishes to respond.

- Check for defendant's signature on the citation.

If the defendant admits responsibility without explanation, he or she must sign the back of the citation in the box stating, "I enter my appearance, waive my right to a hearing, and I admit responsibility for the civil infraction alleged on the front of this citation."

4. Entering Judgment and Collecting Civil Fines and Costs

The court may accept the admission and enter a judgment finding the defendant responsible and impose the appropriate sanction. At that time, the defendant must make full payment for the civil fine and costs.

*It may be a good idea to take identification from the person appearing by representation for the defendant, and to write the name of that person on the ticket.

1.16 Defendant Admits Responsibility With Explanation

The defendant who admits committing the civil infraction, but contends that sanctions should be mitigated because of extenuating circumstances will admit responsibility with explanation.

“[A]n admission with explanation may be written or offered orally....” MCR 4.101(D)(2).

If the dependent admits responsibility with explanation, the court may not set aside the defendant’s admission and find the defendant not responsible. If the court finds the dependent responsible with explanation it may only reduce the civil fine and costs in light of the extenuating circumstances. The court may not reduce the number of points assessed by the Secretary of State.

1.17 Evaluating the Explanation to Determine Whether Sanctions Should Be Reduced

“[T]he court shall accept the admission as though the person has admitted responsibility... and may consider the person’s explanation by way of mitigating any sanction which the court may order....” MCL 257.745(4); MSA 9.2445(4). The statute says “may consider”; it does not give any specific guidelines regarding when and to what extent the court should mitigate sanctions. That decision is left to the discretion of the court. The court’s experience and sense of justice should determine how defendant’s explanation is to be evaluated.

In determining whether the defendant’s explanation warrants a reduction of civil sanctions, we offer the following to help the court evaluate the explanation:

1. Assume certain things about the driver.

For example:

- the driver is familiar with the basic rules of the road;
- the driver knows how to drive in rain, snow, ice, and gusty winds; and
- the driver knows what special precautions must be taken when driving trucks, motor homes, or motorcycles, or when towing vehicles.

2. Be wary of explanations that do not appear credible.

For example:

- an unsubstantiated claim of a sudden health emergency as a defense to speeding,
- an unsubstantiated claim that the speedometer was inaccurate, or
- lack of familiarity with the area where the offense occurred.

3. Be wary of appeals to sympathy and irrelevant facts.

For example:

- “I can’t afford the increased premiums if my insurance company finds out.”
- “I already have ten points and I’ll lose my license if you find me responsible.”
- “I have a clean driving record.”

4. Be wary of explanations that do not relate to the facts of the incident.

These may include complaints about the citing officer’s discourtesy. If the defendant appears in person, the court should give the defendant a reasonable opportunity to “blow off steam,” then suggest to the defendant that he or she take the complaint to a more appropriate forum, such as the citing officer’s police department or the city council. The court should then determine whether the defendant has any explanation that relates to the incident itself. If not, the proceeding should be treated as a simple admission of responsibility.

5. Some explanations constitute a valid defense.

Certain factors may not only mitigate the possible sanctions, but may excuse the defendant entirely. The court may wish to remind the defendant of his or her right to deny responsibility and to request a hearing. These factors include:

- inoperative or improperly working automatic traffic signals;
- signs removed by thieves or obscured because of vegetation, rust, or vandalism; and
- sudden and unforeseeable emergencies, such as brake failure not resulting from lack of proper maintenance.

1.18 Accepting an Admission of Responsibility With Explanation by Mail

If the defendant admits responsibility with explanation for the civil infraction, the defendant shall make an appearance by mail or by contacting the court for a date and time to appear and then appearing in person or by representation. MCL 257.745(3); MSA 9.2445(3).

“If appearance is made by... mail, the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court.” MCL 257.745(4); MSA 9.2445(4).

Accepting an admission of responsibility with explanation by mail includes: 1) examining the case file for completeness, 2) determining whether the defendant has admitted responsibility, and 3) entering judgment and determining the amount of the civil fine and costs based on defendant’s explanation.

1. Examining the Case File For Completeness

The case file will contain the court copy of the citation that corresponds with defendant’s copy of the citation and the defendant’s driving record. If the defendant was cited after an accident, the police report is not generally included in the court file. Defendant’s appearance by mail should include the defendant’s copy of the citation, signed by the defendant admitting responsibility, and a letter of explanation.

- Examine the appearance date.

First, look at the appearance date on the citation and compare it to the postmark date on defendant’s appearance by mail. If the defendant did not appear on or before the appearance date on the citation, the defendant is in default. The court then simply enters a default judgment finding the defendant responsible and imposes the appropriate sanction.

“The time specified in a citation for appearance shall be within a reasonable time after the citation is issued....” MCL 257.741(3); MSA 9.2441(3).

- Check for material defects in the citation

When an offense is committed in the officer’s presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1). A properly completed citation serves as a summons that brings the driver under the court’s jurisdiction and notifies the defendant of the charges. MCR 4.101(A)(2). There may be times when the citing officer does not properly complete the citation, but only material defects in the citation will make it invalid. Material defects may include:

- the absence of the citing officer’s signature,*
- incorrectly identifying the defendant,
- failing to clearly identify the traffic offense,
- failing to specify the location of the offense, or
- failing to specify the date of the offense or entering an incorrect date.

*See MCR 4.101(E)(1).

Courts vary in their opinion as to what actually constitutes a material defect. But if the court finds that a citation was issued with a material defect, it is generally dismissed without prejudice. The citation may be reissued or the citing officer may file a motion to have it reinstated. If the defects in the citation are not material defects and it is timely heard, the court may allow the citing officer to amend the complaint.

- Compare the contents of the citation with the written explanation.

The court should verify that the citation and the written explanation refer to the same offense, the same offender, and to the same time, location, and vehicle.

2. Determining Whether the Defendant Has Admitted Responsibility

Next, the court will determine whether the defendant has actually admitted responsibility for the offense as alleged on the citation.

- Check for defendant's signature on the citation.

This is not problem if the defendant has signed the back of the citation in the box stating, "I enter my appearance, waive my right to a hearing, and I admit responsibility with explanation for the civil infraction alleged on the front of this citation." But sometimes, the defendant will mail his or her copy of the citation to the court without signing it. Individual court policy determines what action to take if this situation arises.

- Check to see that defendant has admitted facts that support a finding of responsibility for the offense, and that defendant has offered an explanation in mitigation of the civil sanctions.

There may be ambiguities in the defendant's written explanation. In many instances, the defendant's written explanation actually denies responsibility. Because the defendant is not readily available to answer questions, the court is at a disadvantage.

Defendants are not attorneys. They are not trained or experienced in the legalities of admissions, admissions with explanation, or denials. It is not uncommon for a defendant to become confused and mail in an admission with explanation when the defendant is in fact giving a written explanation of his or her defense and requesting a decision from the court. It would be unfair to treat this as an admission and deny the defendant a chance to present a defense.

One possible solution is for the court send written notice to the defendant stating that:

- defendant's admission with explanation appears ambiguous;
- defendant does have the right to a hearing if desired, or defendant has the right to waive a hearing, in which case the admission with explanation will be accepted and a sanction imposed; and

- if defendant fails to respond to this written notice within a certain time, it will be considered an admission and a sanction will be imposed (the particular sanction should be stated).

3. Entering Judgment and Determining the Amount of Civil Fines and Costs Based on Defendant's Explanation

Based on the court's evaluation of defendant's admission and written explanation, the court may accept the admission and enter a judgment finding the defendant responsible and impose the appropriate sanction. There are no specific guidelines regarding when and to what extent the court should mitigate sanctions; that decision is left to the discretion of the court. The court's experience and sense of justice should determine what is fair.

If the court believes that the defendant has in fact given a written explanation of his or her defense and requests a decision from the court, it would be unfair to treat it as an admission and deny the defendant a hearing. The court cannot accept the admission. The case must be scheduled for an informal or formal hearing as if the defendant had a denied responsibility in the first place.

1.19 Accepting an Admission of Responsibility With Explanation in Person or by Representation

If the defendant admits responsibility with explanation for the civil infraction, the defendant shall make an appearance by mail, in person or by representation. MCL 257.745(3); MSA 9.2445(3).

If the defendant does not appear by mail, he or she must contact the court (in person, by mail, by telephone, or by representation) for a date and time to appear and then appear in person or by representation. MCL 257.745(3); MSA 9.2445(3).

To appear by representation means that the defendant chooses another person (but not an attorney acting in a legal capacity), to represent the interests of or to stand in the place of the defendant. The representative is empowered to act for the defendant. "If appearance is made by representation..., the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court." MCL 257.745(4); MSA 9.2445(4).*

Accepting an admission of responsibility with explanation in person or by representation includes: 1) scheduling defendant's appearance, 2) examining the case file for completeness, 3) determining whether the defendant has admitted responsibility, and 4) entering judgment and determining the amount of the civil fine and costs based on defendant's explanation.

*It may be a good idea to take identification from the person appearing by representation for the defendant, and to write the name of that person on the ticket.

1. Scheduling Defendant's Appearance

If the defendant does not appear by mail, he or she must contact the court (in person, by mail, by telephone, or by representation) for a date and time to appear and then appear in person or by representation.

Scheduling the appearance date varies from court to court. Some district courts schedule a specific date for the defendant to appear; it will be stated on the citation. Other courts schedule the defendant to appear on a “drop-in” basis within a specific period of time; it too will be stated on the citation. “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued....” MCL 257.741(3); MSA 9.2441(3).

If the appearance date is scheduled by telephone, the court may wish to mail to the defendant a notice confirming the appearance date.

Once the appearance date is scheduled, the defendant is required to appear, either in person or by representation.

- Have available during court hours an appropriate room in which to hear explanations. Any room used should project an image of professionalism and dignity.

2. Examining the Case File for Completeness and Verifying the Identity of the Defendant

The case file will contain the court copy of the citation that corresponds with defendant's copy of the citation and the defendant's driving record. If the defendant was cited after an accident, the police report is not generally included in the court file.

- Examine the appearance date.

First, look at the appearance date on the citation. If the defendant did not appear on or before that date, the defendant is in default. The court then simply enters a default judgment finding the defendant responsible and imposes the appropriate sanction.

Sometimes, the defendant appears in person a few days late. Individual court policy determines what action to take if this situation arises.

- Check for material defects in the citation.

When an offense is committed in the officer's presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1). A properly completed citation serves as a summons that brings the driver under the court's jurisdiction and notifies the defendant of the charges. See MCR 4.101(A)(2). There may be times when the citing officer does not properly

*See MCR
4.101(E)(1).

*It may be a good idea to take identification from the person appearing by representation for the defendant, and to write the name of that person on the ticket.

complete the citation, but only material defects in the citation will make it invalid. Material defects may include:

- the absence of the citing officer's signature,*
- incorrectly identifying the defendant,
- failing to clearly identify the traffic offense,
- failing to specify the location of the offense, or
- failing to specify the date of the offense or entering an incorrect date.

Courts vary in their opinion as to what actually constitutes a material defect. But if the court finds that a citation was issued with a material defect, it is generally dismissed without prejudice. The citation may be reissued or the citing officer may file a motion to have it reinstated. If the defects in the citation are not material defects and it is timely heard, the court may allow the citing officer to amend the complaint.

- Verify the identity of the defendant.

It is important to verify that the defendant, whether appearing in person or by representation, is the same individual who is identified on the citation. If the defendant appears in person, ask if he or she is the person cited.

If the defendant appears by representation, ask if he or she is representing the person cited. Defendants who appear by representation may have any person offer the admission. However, the court may still require the defendant to offer further explanation and/or appear in court.*

3. Determining Whether the Defendant Has Admitted Responsibility

Next, the court will determine whether the defendant has admitted responsibility for the offense as alleged on the citation.

If the defendant appears in person or by representation, the court should read the charge(s) from the citation and ask the defendant or defendant's representative whether he or she understands the charge(s). If the charge is not understood, the court must further explain. Once the defendant or defendant's representative indicates that he or she understands the charge(s), the court should explain the defendant's options (admit responsibility, admit responsibility with explanation, or deny responsibility) and ask the defendant or defendant's representative how he or she wishes to respond.

- Check to see that defendant has admitted facts that support a finding of responsibility for the offense, and that defendant has offered an explanation in mitigation of the civil sanctions.

There may be ambiguities in the defendant's explanation. In many instances, the defendant's explanation actually denies responsibility. But with the defendant readily available to answer questions, the court is at an advantage.

Defendants are not attorneys. They are not trained or experienced in the legalities of admissions, admissions with explanation, or denials. It is not uncommon for a defendant to become confused.

- Check for defendant's signature on the citation.

If the defendant admits responsibility with explanation, he or she must sign the back of the citation in the box stating, "I enter my appearance, waive my right to a hearing, and I admit responsibility with explanation for the civil infraction alleged on the front of this citation."

4. Entering Judgment and Determining the Amount of Civil Fines and Costs Based on Defendant's Explanation

Based on the court's evaluation of defendant's admission and written explanation, the court may accept the admission and enter a judgment finding the defendant responsible and impose the appropriate sanction. There are no specific guidelines regarding when and to what extent the court should mitigate sanctions. That decision is left to the discretion of the court. The court's experience and sense of justice should determine what is fair.

1.20 Request to Withdraw Admission

MCR 4.101(G)(3) states:

"There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in subrule (1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs."

1.21 Defendant Denies Responsibility

If the defendant denies responsibility, he or she must appear at a time set either by the citation or as a result of a communication with the court. MCR 4.101(D)(3). To deny responsibility is to contest the case. The defendant must appear to offer a defense at an informal or formal hearing.*

*See Parts C and D, below.

“A contested action may not be heard until a citation is filed with the court.”
MCR 4.101(E)(1).

*See Parts C
and D, below.

1.22 Adjudication of Contested Civil Infraction Cases

There are two types of hearings for contested civil infraction cases—informal hearings and formal hearings.* The majority of contested cases are heard and decided in informal hearings. A formal hearing will be held when the defendant expressly requests one, or when the decision of an informal hearing is appealed. MCR 4.101(E)(2) and (G)(2).

A formal hearing will also be held when an appearance is filed by an attorney for the defendant. See MCL 257.743(2)(c)(ii); MSA 9.2443(2)(c)(ii).

After the hearing, the court’s decision is incorporated into a judgment that includes the sanctions to be imposed. A judgment is entered as a result of one of the following:

- the court accepts defendant’s admission of responsibility, with or without explanation, by mail, in person, or by representation,
- the court finds defendant responsible or not responsible after a formal or an informal hearing,
- defendant fails to appear or otherwise respond, or
- the case is dismissed due to material defect.

1.23 Taking Matters Under Advisement

The State Court Administrator’s Office has recently stated the following in the October 1998 issue of the *Michigan Supreme Court Report*:

“The SCAO has been encouraged to work with the courts to discontinue the practice of not reporting traffic violation convictions to the Department of State, and to determine the appropriate disposition of fines, fees, and costs when traffic violation convictions are later dismissed.

“The recommendations were published in a recent audit by the Office of the Auditor General, which reviewed the reporting of driver license points and the collection and disposition of fines and fees. In part, the audit addressed the practice of taking traffic cases ‘under advisement.’

“The SCAO recommends that courts discontinue the practice of taking matters under advisement. All convictions must be reported to the Department of State pursuant to MCL 257.732. Without specific statutory authority, programs that provide for payment of fines, fees, or costs without entry of a conviction or report of the conviction to the Department of State must be amended to eliminate payments.

“Locally, the practice of taking matters under advisement may also be known by such terms as: delayed sentencing; deferred sentencing; diversion; auditing; dismissal with costs; or administrative review. Use of these programs is not uniform, resulting in a perception of inconsistent application of justice. Failure to submit conviction abstracts compromises the accuracy and integrity of Michigan driving records and is a public safety issue.

“Chief judges are urged to review the following statutory provisions, ethics opinion and attorney general’s opinion regarding this matter:

- “Judicial Ethics Opinion JI-117, January 9, 1998;
- “Attorney General Opinion 6995, September 16, 1998;
- “MCL 257.6b; MSA 9.1806(2); Definition of a civil infraction determination;
- “MCL 257.8a; MSA 9.1808(1); Definition of a conviction;
- “MCL 257.732; MSA 9.2432; Requirement to abstract convictions, bond forfeitures, civil infraction determinations, and civil infraction default judgments;
- “MCL 257.745; MSA 9.2445; Procedure for admitting or denying responsibility for a civil infraction;
- “MCL 257.746; MSA 9.2446; Procedure for entering a judgment of responsibility after informal hearing;
- “MCL 257.747; MSA 9.2447; Procedure for entering a judgment of responsibility after formal hearing; and
- “MCL 257.907; MSA 9.2607; Procedure for assessment of fines, costs and fees only after a person is determined responsible or responsible with explanation after hearing or after default.”

See also the September 1990 issue of *Michellaneous*, which contains the following statement regarding taking pleas under advisement in civil infraction actions:

“Some courts have a practice of taking civil infraction cases ‘under advisement’ when an offender admits

responsibility. While there appears to be no statutory authority to provide for this practice, it is very common in some courts while not allowed in others. This situation results in confusion for litigants and can lead to a perception that all citizens do not have access to equal justice.

“Some courts limit taking civil infractions under advisement to special cases. Other courts have allowed the process to become so common that the officer (when issuing the citation) or the court clerk (when the offender contacts the court) advises the offender that s/he may request an admission be taken under advisement.

“This practice, regardless of the intentions, negatively impacts the accuracy and integrity of Michigan driving records. Under this procedure, no conviction abstract is submitted to the Department of State. If the offender is not convicted of additional offenses for a specified time period, the citation is dismissed. Consequently, a driver may have several violations under advisement in different courts, or in some cases the same court, and eventually have all of the citations dismissed because no violation was ever submitted for entry to the driving record. As a result, a problem driver could remain on the road with an unblemished driving record.

“While the judiciary has broad discretion over procedural matters, implementation of practice and procedure is controlled by the Michigan Court Rules. To date, neither the Michigan Court Rules nor statute provide for this procedure. Standards relating to driving privileges and traffic safety are set by the Legislature. We recommend that courts discontinue the use of the ‘under advisement’ procedure.”

Part C—Informal Hearings

1.24 The Informal Hearing

“An informal hearing will be held unless (a) a party expressly requests a formal hearing.” MCR 4.101(E)(2)(a). The court is not required to offer the defendant a choice.

An informal hearing is conducted by either a district court magistrate or a district or municipal court judge and proceeds “in an informal manner so as to do substantial justice according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.” MCL 257.746(1); MSA 9.2446(1).

- “There shall not be a jury at an informal hearing.” MCL 257.746(1); MSA 9.2446(1).
- “A verbatim record of an informal hearing shall not be required.” MCL 257.746(1); MSA 9.2446(1). A record is not needed because an appeal from an informal hearing is heard by a judge in the district court at a formal hearing de novo.
- “[T]he person cited may not be represented by an attorney nor may the plaintiff be represented by the prosecuting attorney or attorney for a political subdivision.” MCL 257.746(2); MSA 9.2446(2).
- “[The citing police agency... may subpoena witnesses for the plaintiff. The defendant may also subpoena witnesses.” MCL 257.746(3); MSA 9.2446(3).
- The court must determine that the defendant is responsible for violating a civil infraction “by a preponderance of the evidence.” MCL 257.746(4); MSA 9.2446(4).
- “The plaintiff and defendant shall be entitled to appeal an adverse judgment entered at an informal hearing.” MCL 257.746(5); MSA 9.2446(5).

1.25 Preparing for an Informal Hearing

Have available during court hours an appropriate hearing room. Generally, the district court judge wears a robe, but internal court policy may allow the district court magistrate to also wear a robe. If not, the district court magistrate should wear standard business attire. Personal items should be removed from the hearing room.

It is recommended that the hearing room contain the following items:

- a work area for the parties and their witnesses (have available a calendar, a magnetic board with model cars, a chalkboard, and writing implements);
- a seating area for the parties and their witnesses;
- a separate seating area for spectators and other persons awaiting hearings;
- a raised bench for the judge or magistrate;
- the U.S. flag, the Michigan flag, and the Michigan state seal; and

- a copy of the Michigan Vehicle Code and municipal traffic ordinances.

The court may want to develop an information sheet to help the defendant understand what to expect at the informal hearing. It should be sent to the defendant sometime before the hearing.

1.26 Conducting Informal Hearings

When conducting an informal hearing, the court is guided by the substantive law and internal court policies and procedures. MCL 257.746; MSA 9.2446. It is most important that the court promote understanding, provide reasons for decisions, and treat all parties equally, with courtesy and respect. For many people, informal traffic hearings are their only experience with the court system; what may be a routine traffic case to the court may be a matter of great concern to the person who has requested a hearing.

The court's ability to maintain control over the proceeding is critical. To increase the likelihood of control, to ensure understanding, and to enhance the perception of fairness, follow these steps:

Step 1. Examine the Case File for Completeness

Step 2. Call the Case

Step 3. Explain the Proceeding

Step 4. Read the Traffic Complaint

Step 5. Administer the Oath

Step 6. Take Testimony

Step 7. Decide the Case

Step 8. Impose Sanctions

Step 9. Complete Case Processing

Step 1. Examine the Case File for Completeness

The case file will contain the court copy of the citation that corresponds with defendant's copy of the citation and the defendant's driving record. If the defendant was cited after an accident, the police report is not generally included in the court file.

To avoid prejudice, the driving record should not be reviewed before the hearing.

Before calling the case, determine the elements of the alleged civil infraction, i.e., what the police officer must establish at the hearing in order to find the defendant responsible. Most civil infractions do not require intent, only proof that the defendant violated a provision of the Michigan Vehicle Code or local ordinance. For example, the elements of a posted speeding violation include:

- the posted speed;
- defendant's actual speed;
- identification of the defendant as the driver; and
- identification of the speeding vehicle.

Step 2. Call the Case

The informal hearing begins when the court calls the case. The plaintiff in a civil infraction action will be the police officer who issued the citation. MCL 257.741(1); MSA 9.2441(1). The police officer appears on behalf of the state if the alleged civil infraction is a violation of the Michigan Vehicle Code, or the political subdivision if the alleged civil infraction is a violation of a local ordinance. The defendant will appear in person. Neither party may be represented by an attorney.

If the district court judge or the district court magistrate socializes with the police officer in the hearing room before the hearing begins, the defendant may perceive that the decision will be biased.

To verify that all persons connected with the case are present, the judge or magistrate should ask the officer, the defendant, and any of their witnesses who are present to please step forward.

The court inevitably faces the question of what to do about “no-shows.” Defendants and, to a lesser extent, police officers may arrive late or fail to appear at the scheduled informal hearing. The court should develop a clear, no-exceptions policy as to what constitutes a “no show” (e.g., arriving a certain number of minutes late). When one party appears and the other one does not, the court should advise those present of the time by which the absent party must appear. If the absent party appears after that time, the court should treat it as a “no show.”

If the officer that issued the citation fails to appear, the court may either adjourn, i.e., postpone the case, or dismiss the citation. See OAG, 1983, No 6174 (August 3, 1983) (procedural due process requires presence of citing officer at hearing). If the defendant fails to appear, the court must enter a default judgment against the defendant.

Step 3. Explain the Proceeding

If both of the parties and their witnesses are present, the judge or magistrate should introduce himself or herself and identify the officer and the defendant. Next, explain to those persons present, in plain English, what will happen. Include the following:

- The proceeding is an informal hearing.
- The purpose of an informal hearing is to determine whether the defendant is responsible for a civil infraction traffic violation.
- Each side will have the opportunity to be heard.
- Each side will testify about the facts relating to the incident; the citing officer will go first, then the defendant, who may also offer a defense.
- The court will decide the case after hearing all relevant testimony and applying the appropriate traffic law.
- To enter judgment against the defendant, the court is required to find the defendant responsible by a preponderance of the evidence (a 51 percent majority).
- The sanctions for civil infractions include a civil fine, costs, and perhaps alternate sentencing such as community service, or an education, treatment, or rehabilitation program. The sanctions for civil infractions do not include jail or probation.
- Either party has the right to appeal if dissatisfied with the decision.

Then, ask the parties if they are ready to proceed.

Step 4. Read the Traffic Complaint

Read aloud the following information as it appears on the complaint:

- citation number;
- name of the state or political subdivision acting as the plaintiff;
- name and address of the defendant;
- identification of the vehicle;
- date, time, and location of the alleged civil infraction; and
- description of the alleged civil infraction.

Check for material defects on the citation. Many defendants believe that any error in the citation, no matter how minor, makes the citation invalid. However, the only defects that affect the validity of a citation are material defects.

Material defects may include:

- the absence of the citing officer's signature,*

*See MCR
4.101(E)(1).

- incorrectly identifying the defendant,
- failing to clearly identify the traffic offense,
- failing to specify the location of the offense, or
- failing to specify the date of the offense or entering an incorrect date.

Courts vary in their opinion as to what actually constitutes a material defect. But if the court finds that a citation was issued with a material defect, it is generally dismissed without prejudice. The citation may be reissued or the citing officer may file a motion to have it reinstated. If the defects in the citation are not material defects and it is timely heard, the court may allow the citing officer to amend the complaint.

When an offense is committed in the officer's presence, statute requires that the citation be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1); MSA 9.2442(1). The absence of a signature is a material defect that makes the citation invalid. MCR 4.101(E)(1). Incorrectly identifying the defendant or not properly completing the citation also makes it invalid.

The court need not read the elements of the offense to the parties, but the court must be satisfied that the defendant understands the charge. Ask the defendant again if he or she denies responsibility. At this point, many defendants realize that they, in fact, did commit the civil infraction. The defendant may change his or her response and admit responsibility or admit responsibility with explanation. If so, the formalities for hearing testimony are not necessary; the court may dismiss the officer that issued the citation and any witnesses and proceed with only the defendant.

Step 5. Administer the Oath

Before taking testimony, the court shall administer the oath to the parties and their witnesses. This may be done as a group. Instruct the group to stand and raise their right hands, administer the oath, then ask all to be seated.

Step 6. Take Testimony

Begin by asking the officer who issued the citation to present the case. The officer's testimony should be confined to the facts of the case. Attempts to testify against the defendant as a person, e.g., commenting on the defendant's attitude, should be prohibited. After the officer has finished testifying, the court may question the officer to clarify elements of the alleged civil infraction(s). If the officer has witnesses, their testimony should be heard next.

After the officer and the officer's witnesses have testified, the court should ask the defendant if he or she has any questions to ask them. The defendant should direct questions to the court, who, in turn, conducts the actual questioning of the officer and the officer's witnesses. The court should allow all relevant questions and prohibit those that are irrelevant or argumentative.

Next, ask the defendant to testify. Remember—for many people, informal traffic hearings are their only experience with the court system. The defendant is no doubt less experienced at testifying than the police officer. It is likely that the defendant's testimony will not be confined to the facts of the case. It is often necessary for the court to question the defendant after his or her testimony. If the defendant has witnesses, their testimony should be heard next. Finally, the court should ask the officer if he or she has any questions for the defendant or the defendant's witnesses. If still more facts are needed to decide the case, the court should ask questions of any of the parties.

The court might find it helpful to take notes and document testimony related to each element of the offense.

Step 7. Decide the Case

After accepting the testimony and asking questions, the court must decide whether the defendant is responsible for the civil infraction. Judgment may be entered against the defendant only if the court finds the defendant responsible by a preponderance of the evidence. The court should:

- recite the facts not in dispute;
- announce and explain findings of disputed facts (all findings of fact must relate to some element of the case);
- apply the appropriate traffic law to the facts;
- decide whether the defendant is responsible for the civil infraction; and
- announce and explain the decision.

Step 8. Impose Sanctions

If the court finds the defendant not responsible, the case is dismissed. The defendant, the officer, and all witnesses may be excused.

If the court finds the defendant responsible, civil sanctions are imposed. This is a matter that concerns only the court and the defendant; the officer and all witnesses may be excused.

The defendant's driving record, if available, may be reviewed at this time. To avoid prejudice, it should not be reviewed before the hearing. Review of the driving record, plus testimony of any aggravating or mitigating circumstances, may influence the court's decision as to the amount of the civil fine and costs imposed.

In addition to the civil fine and costs, the court may order the defendant to attend and complete a program of treatment, education, or rehabilitation. MCL 257.907(5); MSA 9.2607(5).

After the court imposes sanctions, the civil fine and costs are payable immediately. However, the court will almost certainly encounter defendants who do not have the money. “Permission may be granted for payment... to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.” MCL 257.907(2); MSA 9.2607(2). Extending time for payment is generally less difficult to administer than permitting installment payments.

If payment of the civil fine and costs would cause the defendant great hardship or if the defendant is truly unable to pay, the court may consider a work or community-service program in lieu of the civil fines and costs. Policy and procedure should be established to identify when this payment alternative should be used, what potential work or community-service programs are available for referral, and how the defendant’s participation in the program will be supervised.

Whatever sanctions are imposed, the court should advise the defendant that failure to pay civil fines and costs, or failure to complete work or community-service programs in lieu thereof, or failure to complete treatment, education, or rehabilitation programs may result in a misdemeanor conviction, possible suspension of one’s driver’s license, and even punishment for contempt of court.

For many of the civil infraction offenses, the court is required to prepare and send to the Secretary of State an abstract of the finding. A finding of responsibility is entered on defendant’s driving record and points may be assessed according to the schedule prescribed by statute. If asked, the court should advise the defendant that points are not assessed by the district court, but rather by the Secretary of State; and unlike civil fines and costs, the court may not adjust the number of points to be assessed.

Step 9. Complete Case Processing

After deciding the case, the judgment must be entered. A copy is given to the defendant, who is then dismissed, and the original is filed with the court. The case file should be updated to include a record of any court activity.

If the defendant or plaintiff appeals, the case will be referred to the district judge who will hear and decide it.

When the court finishes the day’s proceedings, all case files should be returned to the court clerk. The court clerk is responsible for preparing the judgment abstract and forwarding it to the Secretary of State following procedures prescribed by statute. MCL 257.732; MSA 9.2432. The court clerk is also responsible for updating any automated or manual court records.

1.27 Appealing the Decision From an Informal Hearing

An appeal following an informal hearing is a matter of right for both parties. MCR 4.101(G)(2) and MCL 257.746(5); MSA 9.2446(5).

- The appealing party must file a written appeal with the court within 7 days of the judgment. MCR 4.101(G)(2).
- “A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed.” MCR 4.101(G)(2)(a) and 4.101(G)(1)(a). “If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs.” MCR 4.101(G)(2)(a).
- “A plaintiff’s appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff’s attorney for the formal hearing. A bond is not required.” MCR 4.101(G)(2)(b).

An appeal from an informal hearing is heard by a judge at a formal hearing. The formal hearing is held *de novo*, meaning that the judge will hear the case as if for the first time; no consideration is given to the earlier hearing. If a judge presided over the informal hearing, a different judge in the same district will preside over the formal hearing. MCL 257.746(1) and (5)(a); MSA 9.2446(1) and (5)(a), and MCR 4.101(G)(2).

If a district court magistrate presided over the informal hearing, the district court judge may exercise superintending control. “An action taken by a magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves.” MCL 600.8541(1); MSA 27A.8541(1), and MCR 4.401(C). In other words, a district judge may reverse the magistrate’s decision even when there is no appeal. It is unlikely that a district judge will do this unless the magistrate makes a legal error or exceeds his or her authority.

Part D—Formal Hearings

1.28 The Formal Hearing

A formal hearing will be held when the defendant expressly requests one, or when the decision of an informal hearing is appealed. MCR 4.101(E)(2)(a) and 4.101(G)(2).

In addition, a formal hearing is required when a violation of a municipal trailway ordinance is alleged that resulted in “damage to a natural resource

or facility” or the impoundment of a vehicle. MCR 4.101(E)(2)(b) and MCL 600.8717(4)(a)–(b); MSA 27A8717(4)(a)–(b).

First, the court is not required to offer the defendant a choice, but if the defendant requests a formal hearing, the court shall schedule a formal hearing. MCL 257.745(5); MSA 9.2445(5).

- If a hearing date is specified in the citation, that date is for an informal hearing. The defendant or defendant’s counsel must contact the court at least 10 days before that date, in person, by representation, by mail, or by phone, to request a formal hearing. (If by phone, the court should mail the defendant a confirming notice.)
- If a hearing date is not specified in the citation, the defendant or defendant’s counsel must contact the court, in person, by representation, by mail, or by phone, to obtain a scheduled date and time and expressly request a formal hearing. (If by phone, the court should mail the defendant a confirming notice.)

Second, if the decision of an informal hearing is appealed, the court shall schedule a formal hearing. The formal hearing is held *de novo*, meaning that the judge will hear the case as if for the first time; no consideration is given to the earlier hearing. MCR 4.101(G)(2). If a judge presided over the informal hearing, a different judge in the same district will preside over the formal hearing. MCL 257.746(5)(a); MSA 9.2446(5)(a).

A formal hearing must be conducted by a district court judge and takes place under rules more closely resembling those of a trial. A formal hearing is bound by the basic substantive law, the statutory provisions or rules of practice, procedure, pleading, and the rules of evidence. MCL 257.747(1) and (3); MSA 9.2447(1) and (3).

The defendant must testify when called as a witness and can only invoke the Fifth Amendment right against self-incrimination when his or her testimony will in fact tend to incriminate him or her. *People v Ferency*, 133 Mich App 526, 533–35 (1984).

- “There shall not be a jury trial at a formal hearing.” MCL 257.747(4); MSA 9.2447(4).
- A verbatim record of a formal hearing is required. A record is needed because an appeal from a formal hearing is heard by a judge in circuit court, but the appeal is not heard *de novo*.
- “[T]he person cited may be represented by an attorney, but is not entitled to appointed counsel at public expense.” The defendant may subpoena witnesses. MCL 257.747(2) and (3); MSA 9.2447(2) and (3).

- “[T]he prosecuting attorney or attorney for the political subdivision... represents the plaintiff.” That attorney may subpoena witness[es] for the plaintiff. MCL 257.747(3); MSA 9.2447(3).
- As in a civil proceeding, the court must determine that the defendant is responsible for violating a civil infraction by a preponderance of the evidence. MCL 257.747(5); MSA 9.2447(5).
- An appeal is a matter of right for both parties. MCR 4.101(G)(1).

1.29 Appealing the Decision From a Formal Hearing

Appeals from a formal hearing are heard in circuit court.

- “A defendant who appeals must post with the district court, at the time the appeal is taken, bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond.” MCR 4.101(G)(1)(a).
- If by right, the appealing party must file a written appeal with the court within 21 days of the judgment. MCR 7.101(B)(1)(a) and MCL 770.3(1)(b) and (c); MSA 28.1100(1)(b) and (c).
- “The circuit court may grant leave to appeal from a trial court or municipal court when . . . (2) the time for taking an appeal [by right] has expired.” MCR 7.103(A)(2). MCR 7.101(B)(1)(a) and MCL 770.3(1)(b) and (c); MSA 28.1100(1)(b) and (c), require an appeal by right to be filed with the circuit court within 21 days of the judgment. An application for leave to appeal “must be accompanied by an affidavit explaining the delay. The circuit court may consider the length of and reasons for the delay in deciding whether to grant the application.” MCR 7.103(B)(6).
- “A plaintiff’s appeal must be asserted by the prosecuting attorney of the political unit that provided the plaintiff’s attorney for the formal hearing. A bond is not required.” MCR 4.101(G)(1)(c).

Part E—Default Proceedings

1.30 Failure to Answer a Citation or Appear for a Scheduled Hearing

The court inevitably faces the question of what to do about “no-shows.” Defendants and, to a lesser extent, police officers may arrive late or fail to appear at a scheduled hearing. The district judge should develop a clear, no-exceptions policy as to what constitutes a “no show” (e.g., arriving a certain

number of minutes late). When one party appears and the other one does not, the court should advise those present of the time by which the absent party must appear. If the absent party appears after that time, the court should treat it as a “no show.”

Under MCR 4.101(B)(3), “[a] *clerk of the court* may enter a default after certifying . . . that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute.” (Emphasis added.)

“If the person to whom a citation is issued for a civil infraction fails to appear as directed by the citation or other notice, at a scheduled appearance..., at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against that person and the person’s license shall be suspended... until that person appears in court and all matters pertaining to the violation are resolved or until the default judgment is set aside.” MCL 257.748; MSA 9.2448.

“If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

“(a) must enter a default against the defendant;

“(b) must make a determination of responsibility, if the complaint is sufficient;

“(c) must impose a sanction by entering a default judgment;

“(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

“(e) may retain the driver’s license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.”

MCR 4.101(B)(4)(a)–(e).

MCR 4.101(B)(5)(a)–(b) add that “[i]f a defendant fails to appear or otherwise to respond to any matter pending relative to a *traffic* civil infraction, the court (a) must notify the Secretary of State of the entry of the default judgment, as required by MCL 257.732; MSA 9.2432, and (b) must initiate the procedures required by MCL 257.321a(1); MSA 9.2021(1).” (Emphasis added.)

“If a defendant fails to appear or otherwise to respond to any matter pending relative to a *state* civil infraction, the court must initiate the procedures required by MCL 257.321a(1); MSA 9.2021(1).” (Emphasis added.) MCR 4.101(B)(6).

1.31 Failure to Comply With an Order or Judgment

If a person fails to comply with an order or judgment issued for fines and costs for a civil infraction violation, within the time prescribed by the court, the driver's license shall be suspended until full compliance occurs. MCL 257.907(11); MSA 9.2607(11). In other words, failure to comply results in a default for which sanctions are imposed—license suspension is but one.

When a judgment remains unsatisfied for 28 days or more, the court gives the defendant one final opportunity to resolve the matter. The court does so by sending the defendant a 14 day notice to comply. If the defendant still fails to comply within the additional 14 days, the court notifies the Secretary of State, who shall suspend the defendant's license. The suspension remains in effect until the defendant satisfies the judgment and pays a license reinstatement fee. MCL 257.321a(2); MSA 9.2021(1)(2).

A defendant who fails to comply with an order or judgment may face these additional sanctions:

- The defendant may be prosecuted for a misdemeanor. MCL 257.321a(1); MSA 9.2021(1)(1).
- The court may treat a default in payment as civil contempt. If so, the court may then issue an order to show cause or a bench warrant of arrest for the defendant's appearance. MCL 257.908(1); MSA 9.2608(1).

The default in payment constitutes a civil contempt if the defendant fails to appear, or if the court finds the defendant intentionally refused to obey the court order. The court may order the defendant imprisoned until payment is made. The term of imprisonment shall be specified in the order, and shall not exceed 1 day for each \$10. A person committed shall be given credit toward payment for each day of imprisonment and each day of detention before judgment at the rate of \$10 per day. MCL 257.908(3) and (5); MSA 9.2608(3) and (5).

Defendant shall not be discharged from custody until one of the following occurs:

- the defendant has been credited with the amount due,
- the amount due has actually been collected, or
- the amount due has been satisfied by a combination of the two.

MCL 257.908(6); MSA 9.2608(6). Civil contempt shall be purged when the defendant is discharged. MCL 257.908(7); MSA 9.2608(7).

The default in payment does not constitute a civil contempt if the court finds that the defendant made a good faith effort to obtain the funds required for payment, or that the defendant did not intentionally refuse to obey the court

order. The court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs or the unpaid portion thereof in whole or in part. MCL 257.908(4); MSA 9.2608(4).

- The state or local government may use civil process to collect the judgment, e.g., garnisheeing the defendant's wages or placing a lien on his or her property. MCL 257.907(10); MSA 9.2607(10).
- The Secretary of State shall suspend the defendant's license and the suspension will remain in effect until full compliance occurs. MCL 257.907(11); MSA 9.2607(11), and MCL 257.321a(2); MSA 9.2021(1)(2).

MCR 4.101(F)(3) and MCL 257.321a(9); MSA 9.2021(1)(9), provide similar procedures for failure to pay a fine and costs or comply with an order or judgment of the court when the defendant has been found responsible for a state civil infraction.

1.32 Default Judgment

If the defendant fails to answer a citation, or appear for a scheduled hearing, or comply with an order or judgment, the clerk or the court must enter a default judgment against the defendant. In some instances the defendant may have a legitimate excuse. A Michigan court rule allows a defendant to apply to have the default judgment set aside. MCR 4.101(C) states:

“(1) A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

“(a) may be informal,

“(b) may be either written or presented to the court in person,

“(c) must explain the reason for the nonappearance of the defendant,

“(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

“(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed.

“(2) For good cause, the court may

“(a) set aside the default and direct that a hearing on the complaint take place, or

“(b) schedule a hearing on the motion to set aside the default judgment.”

The court rule does not define what constitutes “good cause.” Untimely motions to set aside a default judgment may be considered as provided in MCR 2.603(D) (allows a motion to be filed within 21 days after entry of judgment).

Part F—Civil Sanctions and Licensing Sanctions

1.33 Civil Sanctions for Civil Infractions

When a defendant is found responsible for a civil infraction, civil sanctions are imposed. Civil sanctions are intended to discourage the driver from violating the law again. But unlike criminal sanctions, the sanctions for civil infractions do not include jail or probation.

Civil sanctions for violations of municipal or state civil infractions are as provided by local ordinance or state law. See MCL 600.8727; MSA 27A.8727, and MCL 600.8827; MSA 27A.8827.

1.34 Civil Fines

If the court finds the defendant responsible for a civil infraction, the court may order the defendant to pay a civil fine plus costs. The civil fine and costs shall be payable immediately unless permission for late payment or installments, both within a specified time period, is included in the order or judgment. MCL 257.907(2); MSA 9.2607(2).

As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2); MSA 9.2607(2). Fines for moving violations are doubled if the violation occurs in a construction zone, in a school zone (during certain periods), or at an emergency scene. See MCL 257.601b; MSA 9.2301(2).

Under MCL 257.907(2) and (3); MSA 9.2607(2) and (3), the Michigan Vehicle Code sets forth the following schedule of maximum fines for certain civil infractions:

- Handicap parking violations,—not less than \$50 or more than \$100 plus costs. MCL 257.674(1)(s); MSA 9.2374(1)(s).
- Failure to produce evidence of insurance,—not more than \$10 plus costs. MCL 257.328; MSA 9.2028.

- Child restraint violations,—not more than \$10 plus costs. MCL 257.310d; MSA 9.2410(4).
- Safety belt violations,—the civil fine and costs shall be \$25. MCL 257.710e; MSA 9.2410(5).
- Failure to stop for school bus,—not less than \$100 nor more than \$500 plus costs. MCL 257.682; MSA 9.2382.
- Civil infractions that occurred while driving a commercial motor vehicle—the civil fine shall not exceed \$250 plus costs. MCL 257.907(3); MSA 9.2607(3).

The MVC further sets out a schedule establishing the minimum fine for violating the maximum speed limit on a limited access freeway that has a maximum speed limit of 55 miles per hour or more: 1–5 mph over applicable speed limit—\$10; 6–10 mph over applicable speed limit—\$20; 11–15 mph over applicable speed limit—\$30; 16–25 mph over applicable speed limit—\$40; 26 or more mph over applicable speed limit—\$50. MCL 257.629c(1); MSA 9.2329(3)(1).

However, this schedule does not apply to a person driving a passenger vehicle drawing another vehicle or trailer with combined weight of more than 750 lbs, having 2 wheels or less. It does not apply to a trailer coach with brakes more than 26 feet in length. It does not apply to a truck with gross weight of 10,000lbs or more. And it does not apply to a person driving a school bus. MCL 257.629c(2); MSA 9.2329(3)(2).

The civil fine imposed for a violation of the Michigan Vehicle Code or any other state statute “shall be exclusively applied to the support of public libraries and county law libraries....” MCL 257.909(1); MSA 9.2609(1).

In general, the civil fine imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Michigan Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. MCL 600.8379; MSA 27A.8379.

Note: A state police officer will almost always write up a civil infraction under state law. A local municipal police officer will almost always write up a civil infraction under a local ordinance, if there is one, unless policy within the local municipality dictates otherwise (it’s a revenue issue). Obviously, it is an advantage to the local municipalities to have the citing officer write up a civil infraction under the local ordinance, rather than the state statute. That way both the civil fine and costs go to support the municipality, rather than the fine going to support the libraries.

1.35 Court Costs

The statute regarding the assessment of costs in civil infraction cases appears to limit costs to expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, excluding expenses to support the day-to-day operations of the court. MCL 257.907(4); MSA 9.2607(4). See also *Board of Library Commissioners of the Saginaw Public Libraries v Judges of the 70th District Court*, 118 Mich App 379, 387–88 (1982).

Costs of not less than \$5 shall be ordered, except for parking violations. However, costs shall not be ordered in excess of \$100. MCL 257.907(4); MSA 9.2607(4). But see MCL 600.8381(1); MSA 27A.8381(1), which provides for not less than \$9 in costs to be assessed for each civil infraction determination.

Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff (the district control unit). MCL 257.907(4); MSA 9.2607(4).

In general, the court costs imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Michigan Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. MCL 600.8379; MSA 27A.8379.

“The clerk of the district court, on or before the fifteenth of the month . . . , shall transmit 45 cents of the costs collected to the executive secretary of the Michigan judges retirement system..., and shall transmit \$8.55 of the costs collected to the state treasurer.” This amount is then allocated to the legislative retirement and other funds. MCL 600.8381(1); MSA 27A.8381(1).

1.36 Schedule of Recommended Ranges of Civil Fines and Costs

“The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions.” MCL 257.908(8); MSA 9.2608(8). This schedule is not binding on the courts; it is intended as a normative guide for judges and district court magistrates and as a basis for public evaluation for disparities in the imposition of civil fines and costs throughout the state.

Each district of the district courts and each municipal court may establish their own schedule of civil fines and costs for civil infractions which occur within the respective district or city (keeping in mind the statutory

maximums). If the court does establish a schedule, “it shall be prominently posted and readily available for public inspection.” It does not have to include all civil infractions and the “schedule may exclude cases on the basis of a defendant’s prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.” MCL 257.907(7); MSA 9.2607(7).

The state court administrator expects the individual district courts to prepare their own schedule of civil fines and costs, taking into account the various factors within their court affecting costs. Additional costs resulting from formal or informal hearings, multiple appearances, enforcement proceedings for non-appearance, or failure to pay fines and costs, should be computed and added, as applicable, by the individual courts.

“A court may not increase a scheduled civil fine because the defendant has requested a hearing.” MCR 4.101(F)(1).

1.37 Waiving Civil Fines and Court Costs

“The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error.” MCR 4.101(F)(4).

The court shall waive civil fines and costs under the following circumstances:

- For defective safety equipment violations—if written under MCL 257.683; MSA 9.2385, “upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation.” MCL 257.907(9); MSA 9.2607(9).
- For child restraint violations—“if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the [statutory] requirements....” MCL 257.907(12); MSA 9.2607(12).
- For failing to produce a valid registration certificate—“upon receipt of a certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation... occurred.” MCL 257.907(14); MSA 9.2607(14).
- For failing to possess license while operating vehicle—“upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, has produced his or her operator’s or chauffeur’s license and that the license was valid on the date the violation . . . occurred.” MCL 257.901a; MSA 9.2601(1).

1.38 Assessments

The following amounts shall also be assessed:

- Highway Safety Fund Assessment—\$5 for each civil infraction moving violation. MCL 257.629e(1); MSA 2329(5)(1).
- Secondary Road Patrol and Training Assessment—\$5 for each civil infraction moving violation. MCL 257.629e(1); MSA 2329(5)(1).
- Michigan Justice Training Fund Assessment—\$5 (but not for a parking violation or a violation for which the total fine and costs imposed are \$10 or less). MCL 257.907(13); MSA 9.2607(13).

The assessments are levied to the state treasury who shall deposit the revenue into the respective funds. These amounts are not considered civil fines. MCL 257.907(13); MSA 9.2607(13), and MCL 257.629e(2); MSA 2329(5)(2).

1.39 Treatment, Education, and Rehabilitation Programs

In addition to the civil fine and costs, the defendant may be ordered to attend and complete a program of treatment, education, or rehabilitation. MCL 257.907(5); MSA 9.2607(5).

The court may not place the defendant on probation for a civil infraction. *People v Greenlee*, 133 Mich App 734, 736–37 (1984).

1.40 Civil Contempt Proceedings, Default as Civil Contempt

If defendant fails to pay the civil fine, costs, or both, the court may require the defendant to show cause why the failure to pay, or default should not be treated as in civil contempt. The court may issue a summons, order to show cause, or a bench warrant of arrest for the defendant's appearance. MCL 257.908(1); MSA 9.2608(1). Courts do not often pursue this remedy, but it is available.

If this remedy is pursued, the court shall find that the default constitutes civil contempt and may order the defendant committed, unless the defendant shows that the default was not intentional or that good faith effort was made to get the funds required for payment. If the court finds that the default does not constitute civil contempt, the court may enter an order allowing the defendant more time, reducing the amount of payment, or revoking the fine or costs. MCL 257.908(3) and (4); MSA 9.2608(3) and (4).

The term of imprisonment shall be specified in the order of commitment, and shall not exceed 1 day for each \$10 of the fine and costs. Credit shall

be given toward payment for each day of imprisonment or detention at the rate of \$10 per day. MCL 257.908(5); MSA 9.2608(5).

The defendant shall not be discharged from custody until one of the following occurs:

- defendant is credited with the amount due,
- the amount due has actually been collected through execution of process or otherwise, or
- the amount due has been satisfied by a combination of the above.

MCL 257.908(6)(a)–(c); MSA 9.2608(6)(a)–(c). The civil contempt shall be purged when the defendant is discharged. MCL 257.908(7); MSA 9.2608(7).

A default in payment of a civil fine and costs may also be collected by any means authorized for the enforcement of a judgment, including attachment and garnishment. MCL 257.908(10); MSA 9.2608(10).

1.41 Licensing Sanctions for Civil Infractions

Within 14 days after the entry of a reportable* civil infraction determination or default judgment, the court shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a); MSA 9.2432(1)(a).

The abstract shall be certified by signature, stamp, or facsimile signature to be true and correct. The abstract must be certified by signature, stamp, or facsimile signature to be true and correct, and it must contain the following information:

“(a) The name, address, and date of birth of the person charged or cited.

“(b) The number of the person’s operator’s or chauffeur’s license, if any.

“(c) The date and nature of the violation.

“(d) The type of vehicle driven at the time of the violation

“(e) The date of the conviction, finding, forfeiture, judgment, or civil infraction determination.

“(f) Whether bail was forfeited;

“(g) Any license revocation, restriction, suspension, or denial ordered by the court pursuant to this act.

“(h) Other information considered necessary to the Secretary of State.”

MCL 257.732(3)(a)–(h); MSA 9.2432(3)(a)–(h).

*Municipal and state civil infractions need not be “abstracted.” See MCL 257.732; MSA 9.2432.

1.42 Points

The finding of responsibility is entered on defendant's driving record. Points may also be assessed according to the schedule prescribed by statute. MCL 257.320a; MSA 9.2020(1). Assessing points is a mandatory function of the Secretary of State; it is not a function of the court.

a. Speed violations exceeding the lawful maximum:

- by 16mph or more—4 points
- by 11mph to 15mph—3 points
- by 10mph or less—2 points

MCL 257.320a(1)(e), (i), and (j); MSA 9.2020(1)(1)(e), (i), and (j). Speed violations established by executive order issued during a state of energy emergency have the same point schedule. MCL 257.320a(7); MSA 9.2020(7).

b. Notwithstanding the assessment of points above, the Michigan Vehicle Code further sets out a point schedule for violating the maximum speed limit on a limited access freeway that has a maximum speed limit of 55 miles per hour or more:

1–5 mph over applicable speed limit—0 points

6–10 mph over applicable speed limit—1 point

11–15 mph over applicable speed limit—2 points

16–25 mph over applicable speed limit—3 points

26 or more mph over applicable speed limit—4 points

MCL 257.629c(1); MSA 9.2329(3)(1).

c. Careless driving—3 points. MCL 257.320a(1)(i); MSA 9.2020(1)(1)(i).

d. Disobeying traffic signal or stop sign, or improper passing—3 points. MCL 257.320a(1)(k); MSA 9.2020(1)(1)(k).

e. "All other moving violations" that are declared by statute to be civil infractions except those listed in g. and h. below—2 points. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(n).

f. Under MCL 257.320a(2) and (4); MSA 9.2020(1)(2) and (4), points shall not be entered for:

- defective equipment MCL 257.683-.714a; MSA 9.2383.2414(1)

- violation of graduated licensing provision MCL 257.310e(15); MSA 2010(5)(15)
- failure to possess license while operating vehicle MCL 257.311; MSA 9.2011
- OUIL–commercial vehicle MCL 257.625m; MSA 9.2325(13)
- certain bicycle, motorcycle, and moped violations
MCL 257.658; MSA 9.2358
- wide load violations
MCL 257.717; MSA 9.2417
- vehicle height violations
MCL 257.719; MSA 9.2419
- vehicle towing mobile home violations
MCL 257.719a; MSA 9.2419(1)
- identification requirement violations for trucks, tractors, towing vehicles, and platform bed wrecker road service
MCL 257.723; MSA 9.2423

g. The following violations are not abstracted to the Secretary of State; therefore, there are no points assessed:

- parking or standing violations
- nonmoving violations that are not the basis for the Secretary of State’s suspension, revocation, or denial of a driver’s license
- registration or certificate of title violations that are not the basis for the Secretary of State’s suspension, revocation, or denial of a driver’s license
- pedestrian, passenger, or bicycle violations
- safety belt violations

MCL 257.732(15)(a)–(e); MSA 9.2432(15)(a)–(e).

h. “If more than one conviction, civil infraction determination, or probate court disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.” MCL 257.320a(5); MSA 9.2020(1)(5).

1.43 License Suspension

The court may not suspend the defendant’s driver’s license for a civil infraction. *People v Greenlee*, 133 Mich App 734, 736–37 (1984).

A person shall be guilty of a misdemeanor if he or she fails to answer a citation, fails to appear, or fails to comply with an order or judgment issued for a

violation of a civil infraction, or for a criminal traffic violation, within the time prescribed by the court. MCL 257.321a(1); MSA 2021(1)(1). In addition, the Secretary of State shall suspend the person's driver's license until all matters relating to the violation or the noncompliance are resolved, including payment of all fines, costs, assessments, and a driver license reinstatement fee. MCL 257.748; MSA 9.2448. See also MCL 257.321a(9); MSA 9.2021(1)(9) (driver license reinstatement fee in cases involving state civil infractions).

